

## § 207.101

a continuing violation constituting a separate violation;

(2) Debarment from practice in any capacity before the Commission, which disbarment may, in appropriate circumstances, include such person's partners, associates, employers and employees, for a designated time period following publication of a determination that the protective order has been breached;

(3) Denial of further access to proprietary or privileged information covered by the breached protective order or to proprietary information in future Commission proceedings;

(4) An official reprimand by the Commission;

(5) In the case of an attorney, accountant, or other professional, referral of the facts underlying the prohibited act to the ethics panel or other disciplinary body of the appropriate professional association or licensing authority;

(6) When appropriate, referral of the facts underlying the violation to the United States Trade Representative or his or her designees, or to another government agency; and

(7) Any other administrative sanctions as the Commission determines to be appropriate.

(b) Each partner, associate, employer, and employee described in paragraph (a)(2) of this section is entitled to all the administrative rights set forth in this subpart.

(c) For the purposes of this subpart, the knowing receipt of information the receipt of which constitutes a violation of a protective order includes, but is not limited to, the reading or unauthorized dissemination of the information covered by a protective order by a person who knows or should reasonably believe that he or she is not authorized to read or disseminate such information.

### **§ 207.101 Reporting of prohibited act and commencement of investigation.**

(a) Any person who has information indicating that a prohibited act has been committed shall immediately report all pertinent facts relating thereto to the Commission Secretary.

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(b) Upon receipt, the Commission Secretary shall record the information, assign an investigation number, and forward all information he or she received to the Office of Unfair Import Investigations.

(c) As expeditiously as possible, the Office of Unfair Import Investigations shall conduct an inquiry to determine whether there is reasonable cause to believe that a person or persons have committed a prohibited act. At any time, the Office of Unfair Import Investigations may request that the Commission assign an administrative law judge to oversee the inquiry.

(d) At the conclusion of the inquiry, the Office of Unfair Import Investigations shall assess whether the available information is sufficient to provide reasonable cause to believe that a person or persons have committed a prohibited act.

### **§ 207.102 Initiation of proceedings.**

(a) Upon completion of the inquiry,

(1) If the Office of Unfair Import Investigations concludes that there is not reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall:

(i) Submit a report to the Commission; and

(ii) Unless the Commission directs otherwise, the file shall be closed and returned to the Commission Secretary.

(2) If the Office of Unfair Import Investigations concludes that there is reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall:

(i) Make a recommendation to the Commission regarding whether and to what extent it is appropriate to notify the person whose proprietary information may have been compromised; and

(ii) Submit a report and recommendation to the Commission regarding whether to initiate sanctions proceedings or to take other appropriate action.

(b) The Commission may make any appropriate determination regarding the initiation of sanctions proceedings,

including rejecting, approving, or approving and amending any recommendation made by the Office of Unfair Import Investigations.

(c) If the Commission determines that it is appropriate to issue a charging letter, the Commission shall appoint an administrative law judge to oversee the proceeding and the Commission Secretary shall initiate a proceeding under this subpart by issuing a charging letter as set forth in 19 CFR 207.103.

(d) If the Commission determines that it is appropriate to initiate proceedings, but that the party to be charged is beyond the jurisdiction of the Commission and within the jurisdiction of another Free Trade Area country, or that for other reasons an authorized agency of another Free Trade Area country would be the more appropriate forum for initiation of a proceeding, the Commission shall take the necessary steps for issuance of a letter requesting the authorized agency of another Free Trade Area country to initiate proceedings under applicable law on the basis of an alleged prohibited act.

(e) The Commission may make any determination regarding notification about the alleged prohibited act and the relevant underlying facts to the persons who submitted the proprietary information that allegedly has been disclosed. A determination by the Commission on this subject does not foreclose the administrative law judge from redetermining at any time during the hearing whether notification to the compromised party is appropriate.

(f) If the Commission determines that it is not appropriate to issue a charging letter or to refer the facts to the authorized agency of another Free Trade Area country, the file shall be closed and returned to the Commission Secretary, unless the Commission directs otherwise.

(g) All aspects of the inquiry shall remain confidential, except as deemed reasonably necessary to the Office of Unfair Import Investigations to gather relevant information and to protect the interests of the person who submitted the proprietary information, or except as otherwise ordered by the Commission. Except as the Commis-

sion may otherwise order, the Commission Secretary shall maintain all closed investigatory files in confidence to the extent permitted by law, and shall destroy any documentary evidence containing allegations of a prohibited act for which no proceeding is initiated one year after the file is closed.

#### § 207.103 Charging letter.

(a) *Contents of charging letter.* Each charged party shall be served by the Commission with a copy of a charging letter and any accompanying motion for interim measures, as provided for in 19 CFR 207.106. The charging letter shall include:

(1) Allegations concerning a prohibited act;

(2) A citation to §207.100 of this subpart, for a listing of sanctions that may be imposed for a prohibited act;

(3) A statement that a proceeding has been initiated and that an APA hearing will be held before an administrative law judge;

(4) A statement that the charged party or his or her attorney may request the issuance of an appropriate administrative protective order to obtain access to the information upon which the charge is based;

(5) A statement that the charged party has a right to retain an attorney at the charged party's own expense for purposes of representation; and

(6) A statement that the charged party has the right to request in the response described in §207.104 of this subpart that the proceedings remain confidential to the extent practicable.

(b) *Service of charging letter.* (1) The charging letter shall be served in a double envelope. The inner envelope shall indicate that it is to be opened only by the addressee. Service of a charging letter shall be made by one of the following methods:

(i) Mailing a copy by registered or certified mail addressed to the charged party at the party's last known permanent address; or

(ii) Personal service; or

(iii) Any other method acceptable under Rule 4 of the Federal Rules of Civil Procedure.